IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 35/2007

Mrs. Getunga Shaikh Abdul Kadar,

wife of Shaikh Abdul Kadar,
r/o. House No.E-156,
Campal, Panaji,Goa. ..... Petitioner.

V/s.

1. Alcina Pacheco Figueiredo
widow of Joao Manuel Pacheco Figueiredo
r/o. House No.E-156,
Campal Panaji, Goa
at present r/o.
C/o. Dr. John De Figueiredo
P.O. 573, Cheschire Connecticut,
06410-0573 U.S.A., represented by her attorney
Sunit F. Rodrigues, r/o. of Defence Colony,
Porvorim, Bardez, Goa (since deceased)
through Legal Lrs. of Plaintiff Alcina
Pacheco Figueiredo,
a) Rui Jose Pacheco de Figueiredo
r/o. 65, Whitman Court, Irvine,
California, 92715-4066,
b) Dr. Joao Manuel do Rosario Pacheco
Figueiredo, r/o. P.O. 573, Cheschire,
Conneaicup, 06410-0573,
c) Luis Caetano de Jesus Pacheco de
Figueiredo, r/o. Povade Xaizim,
Portugal.

2. Shaikh Abdul Kadar,
s/o. Shaikh Abdulla, married,
retired Government Servant,
r/o. House No.E-156,
Campal, Panaji, Goa.

3. Mario Joaquim de Jesus Pacheco
de Figueiredo, r/o. Chesterfield,
Missori, U.S.A. ..... Respondents.

Ms. Rakhi Chodankar, Advocate for the petitioner.

Mr. M. Aguiar, Advocate for the respondents.

CORAM : S.K. SHAH, J.

DATE : 23RD FEBRUARY, 2007

ORAL JUDGMENT :

Heard Rule, returnable forthwith and heard finally with the consent of the parties.

2. By this writ petition, the original defendant has challenged the order passed by the Civil Judge, Sr. Division, at Panaji in Special Civil Suit No. 55/96/B on 6.1.2007, whereby the application made on behalf of the defendant No.1 by his Advocate requesting for time to study the mater and take appropriate steps to examine the witness was rejected.

3. The evidence of the plaintiff was over. The defendant No.1's evidence was also over. In the application which was made on 6.1.07, it was specified by the Advocate of the defendant No.1 that the Advocate was engaged by the defendant No.1 two days back and that he wanted some time for studying the matter and to take appropriate steps to examine the witness. It is on this ground that the adjournment was sought. However, the Court observed that no list of witnesses was furnished and in the application, the names of the witnesses were also not given and that the matter being old direction matter of 1996, the application was rejected and the matter was adjourned for arguments. It is this order which has been challenged in this writ petition.

4. The learned Counsel for the petitioner submits that the names of the

witnesses could not be given as the Advocate was engaged by the defendant No.1 very recently and that he wanted to study the matter. However, the learned trial Judge has not given the adjournment. On the other hand, the learned Counsel for the respondents submits that on the earlier occasion, it was specifically directed by the Court that if no witnesses were examined on the next date i.e. on 6.1.07, the evidence of the defendants would be closed and the matter would proceed for arguments and, therefore, he submits that the writ petition should be rejected.

5. The facts in this matter were peculiar in the sense that till 3.1.2007, the defendant was conducting his case in person. It is only two days earlier to 6.1.07 that he had engaged the Advocate and it is on this ground that the Advocate had asked for adjournment as he did not have sufficient time to study the matter and to decide whether more witnesses were required to be examined or not. In this peculiar facts of the case, the learned Judge ought to have granted time to the Advocate of the defendant No.1 to take necessary steps in the matter.

6. By rejecting the application, the learned Judge has committed an error. Therefore, it is necessary to be interfered with. The impugned order being improper, is hereby set aside. The writ petition is allowed. Rule is made absolute in the aforesaid terms. The parties shall appear before the trial Court on 6th March, 2007 at 10.00 a.m. The defendants shall keep the witnesses present on that day before the Court for being examined.

S.K. SHAH, J.

ssm.